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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/723,550	11/25/2003	Suen Ching Yan	03-12538	9734

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EXAMINER	
HANEY, RICHALE LEE	

ART UNIT	PAPER NUMBER
3765	

DATE MAILED: 08/31/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/723,550	YAN, SUEN CHING	
	Examiner	Art Unit	
	Richale L. Haney	3765	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *19 June 2006*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-16* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-16* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Response to Amendment

The amendment filed on 6/19/2005 has been received. Claims 1, 8 and 13 have been amended. Claims 1 –16 are currently pending in the application.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2. Claims 1 – 5, 7 –10, 12 – 14 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Friedman (US 2002/0029404) in view of Park (US 6,446,266) and Goldsmith (US D93,212). The device of Friedman discloses that headwear having six gores (Figure 1a) forming a lower peripheral edge, a sweatband (15) spanning an inverted "U" shaped opening (35) and a ribbon terminating at two ends is known in the art (25a, 25b). Friedman teaches an improvement comprising two fabric pieces secured to the body of the cap at opposite ends of the inverted "U" shaped opening (125a, 125b), a generally oval shaped visor (120) obliquely coupled to the crown (See Fig. 2). The device of Friedman is lacking a visor that generally circumscribes the lower peripheral edge and gores comprising multiaxially stretchable fabric. The device of Goldsmith shows headwear having a oval shaped visor generally circumscribing the lower peripheral edge. The device of Park discloses a hat having a sweatband that

spans an inverted "U" shaped opening at the rear of a cap comprising an elastomeric section (Column 2, lines 60 –63) and gores that are formed from multiaxially stretchable fabric (Column 2, line 42). It would have been obvious to modify the device of Friedman by enlarging the visor to circumscribe the lower edge and to incorporate stretch into the gores and the sweatband as taught by Goldsmith and Park, respectively in order to obtain a device which provides greater protection from the sun and improved fit characteristics. It is noted by the examiner that chosing the same color for the visor, first and second ribbon would have been an obvious design choice. No additional patentable weight is given to the limitation requiring specific color placement.

3. Claims 6, 11, and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Friedman, Park and Goldsmith as applied to claims 1 – 5, 7 –10, 12 – 14 and 16 above in further view of Beckerman (US 5,615,415). The modified device of Friedman substantially discloses the claimed invention, but is lacking unilateral stretch. The device of Park teaches that the material of the crown is stretchable and is therefore interpreted to be mulitaxially stretchable. The device of Beckerman teaches a crown having gores formed from material having stretch in only one direction (Column 3, lines 32 –42). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the combination of Friedman, Park and Goldsmith above, to have stretch in only one direction as taught by Beckerman in order to obtain a headwear device that will fit a variety of headsizes (Column 3, lines 36 –37).

Response to Arguments

4. Applicant's arguments filed 6/19/2006 have been fully considered but they are not persuasive.

5. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). Applicant submits that the examiner has noted considered the claimed invention as a whole. The device of Goldsmith discloses a cap having a plurality of gores and ribbons secured to each side of an inverted opening. The device is silent as to the construction of the gores and is lacking a sweatband having an elastic portion spanning the inverted "u" shaped opening. A person of ordinary skill in the art would have been motivated to utilize either mulitaxially or uniaxially stretchable fabric to improve the fit of the cap, this is a well known method of providing flexibility to a variety of headsizes. Additionally, it would have been obvious to further modify the device by incorporating a sweatband, having an elastic section which spans an inverted "u" shaped opening, in order to achieve improved fit as cited in the previous rejection. Also the sweatband acts as absorbent for perspiration when the device is worn in warm weather. Together, these elements taken as a whole would produce the invention as claimed by the applicant. The ties discloses in the Friedman reference would provide decoration and

the elastic portion of the sweatband would inherently provide a more snug fit for the wearer.

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Henderson (US 5,590,422) discloses an elastic sweatband used in combination with two ties for the wearers hair.

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Richale L. Haney whose telephone number is 571-272-8689. The examiner can normally be reached on M-F 8:00 - 4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Welch can be reached on 571-272-4996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Richale L. Haney
Patent Examiner
Art Unit 3765
August 29, 2006

RLH

GARY L. WELCH
PRIMARY EXAMINER